

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LORI CAVANAUGH, HELENE)
SHAFFER, SANDRA DAVIS)
HARBOR AND DONALD RORIE,)
INDIVIDUALLY & ON BEHALF OF)
ALL OTHERS SIMILARLY)
SITUATED)

CIVIL ACTION NO: 3:12 cv 4200

Plaintiffs,)

JURY DEMANDED

v.)

NEW ENGLAND COMPOUNDING)
PHARMACY, INC. D/B/A NEW)
ENGLAND COMPOUNDING)
CENTER,)

Defendant.)

**MOTION OF DEFENDANT NEW ENGLAND COMPOUNDING PHARMACY,
INC. D/B/A NEW ENGLAND COMPOUNDING CENTER TO STAY ALL
PROCEEDINGS PENDING RULING ON MOTION FOR TRANSFER AND
CONSOLIDATION BY THE JUDICIAL PANEL ON MULTIDISTRICT
LITIGATION**

Defendant New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center (“NECC”), by its undersigned counsel, respectfully submits this Motion to Stay All Proceedings Pending a Ruling on Motion for Transfer and Consolidation by the Judicial Panel on Multidistrict Litigation. In support of this Motion, Defendant states as follows:

1. In the instant matter, Plaintiffs allege personal injuries secondary to being injected with the steroid methylprednisolone acetate allegedly compounded by NECC. A copy of Plaintiffs' Third Amended Original Complaint is annexed hereto as Exhibit "A".¹

2. Plaintiffs' claims are virtually identical to those alleged by other plaintiffs in various federal courts across the country. There are at least 100 such cases currently pending in numerous federal courts. All of these actions seek recovery for injuries allegedly caused by the injection of methylprednisolone acetate compounded and distributed by NECC, under similar, if not identical theories of recovery, including negligence, strict products liability, breach of express and implied warranties, negligent and fraudulent misrepresentation, lack of informed consent, fraud and deceit, and violation of state consumer protection laws or deceptive trade practices acts.

3. On October 16, 2012, plaintiffs in the Michigan action, *Bansale v. New England Compounding Pharmacy, Inc.*, Case No. 12-cv-14559 (E.D. Mich. filed Oct. 15, 2012), filed a Motion for Transfer and Consolidation of Related Cases (the "MDL Motion") with the Judicial Panel on Multidistrict Litigation (the "Panel") seeking to coordinate four actions for pretrial discovery and proceedings pursuant to 28 U.S.C. § 1407(a) in the District of Minnesota before Judge Donovan W. Frank.² A copy of the MDL Motion is annexed hereto as Exhibit "B". On December 13, 2012, the Panel agreed to hear the MDL Motion on January 31, 2013. A copy of the MDL Notice of Hearing is annexed hereto as Exhibit "C".

¹ Plaintiffs filed their Fourth Amended Original Complaint on December 19, 2012, however, that Complaint was filed without a Motion for Leave.

² The MDL Motion seeks to consolidate and coordinate over 80 matters. *See IN RE: New England Compounding Pharmacy, Inc., Products Liability Litigation*, MDL No. 2419 (J.P.M.L. filed Oct. 16, 2012).

4. While the Panel considers the MDL Motion, Defendant respectfully requests a stay of all proceedings in this action, including all pretrial discovery and future motion practice. For this Court to continue advancing discovery or proceedings would work at cross-purposes with those of the Panel as it adjudicates the MDL Motion and considers whether to consolidate and transfer the cases to one venue.

5. Because the instant action involves similar predicate factual allegations and overlapping claims for relief, continuing further proceedings pending a decision by the Panel risks needlessly wasting this Court's limited time and resources, as well as that of the parties hereto; it may also alter the underlying circumstances that the Panel must consider in adjudicating the MDL Motion. Thus, to promote judicial economy and avoid prejudice to any of the parties, and to allow the MDL Motion to be ruled upon without any change in circumstances, Defendant respectfully requests a stay pending the Panel's determination.³

6. Accordingly, for the reasons set forth above, Defendant respectfully requests that the Court grant this Motion and stay all proceedings in this action, pending a ruling on the MDL Motion by the Panel.

WHEREFORE, Defendant respectfully requests that this Court grant the instant Motion to Stay All Proceedings Pending a Ruling on Motion for Transfer and Consolidation by the Judicial Panel on Multidistrict Litigation in its entirety, staying all proceedings in this action, including pretrial discovery and future motion practice, while the Panel adjudicates the MDL Motion, together with granting Defendant such other and different relief as the Court deems just, proper, and equitable under the circumstances.

Dated: December 19, 2012

³ Defendant is filing similar motions to stay in other cases pending in other federal courts.

Respectfully submitted,

By: /s/ David M. Macdonald
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**ATTORNEYS FOR DEFENDANT
NEW ENGLAND COMPOUNDING
PHARMACY, INC. D/B/A NEW
ENGLAND COMPOUNDING CENTER**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to Plaintiffs' counsel of record via CM/ECF and facsimile on this 19th day of December, 2012.

/s/David M. Macdonald
David M. Macdonald

CERTIFICATE OF CONFERENCE

I hereby certify that on December 19, 2012, I conferred with Plaintiffs' counsel, Mitchell A. Toups, for the purpose of a certificate of conference on this Motion. Plaintiffs are unopposed to this Motion.

/s/ Jennier D. LeBlanc
JENNIFER D. LEBLANC